# HOUSE . . . . . . . . . . . . No. 3571

## The Commonwealth of Massachusetts

PRESENTED BY:

#### Kevin G. Honan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to stabilize neighborhoods through the protection of tenants in foreclosed properties.

#### PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kevin G. Honan	17th Suffolk
William N. Brownsberger	24th Middlesex
Cheryl A. Coakley-Rivera	10th Hampden
Martha M. Walz	8th Suffolk
Antonio F.D. Cabral	13th Bristol
Peter v. Kocot	1st Hampshire
William Lantigua	16th Essex
Timothy J. Toomey, Jr.	26th Middlesex
Stephen L. DiNatale	3rd Worcester
Christopher J. Donelan	2nd Franklin
Christine E. Canavan	10th Plymouth
John V. Fernandes	10th Worcester
Sean Garballey	23rd Middlesex
James J. O'Day	14th Worcester District
Sarah K. Peake	4th Barnstable
Carl M. Sciortino, Jr.	34th Middlesex
Martin J. Walsh	13th Suffolk
Steven M. Walsh	11th Essex
Gloria L. Fox	7th Suffolk

John P. Fresolo	16th Worcester
Kevin J. Murphy	18th Middlesex
Matthew C. Patrick	3rd Barnstable
Todd M. Smola	1st Hampden
Theodore C. Speliotis	13th Essex
Alice K. Wolf	25th Middlesex
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Katherine Clark	32nd Middlesex
Denis E. Guyer	2nd Berkshire
Jonathan Hecht	29th Middlesex
Kay Khan	11th Middlesex
Paul McMurtry	11th Norfolk
Alice Hanlon Peisch	14th Norfolk
Pam Richardson	6th Middlesex
Peter J. Koutoujian	10th Middlesex
Ellen Story	3rd Hampshire
	·

### The Commonwealth of Alassachusetts

In	the	Year	Two	Thousand	and	Nine

AN ACT TO STABILIZE NEIGHBORHOODS THROUGH THE PROTECTION OF TENANTS IN FORECLOSED PROPERTIES.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make to protect citizens of the Commonwealth, therefore it is hereby declared to be an emergency law necessary for the immediate protection of the public, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Section 5 of chapter 59 of the general laws is hereby amended by inserting after
- 2 clause fifty-five the following clause:-
- 3 Fifty sixth. Real estate owned by or held in trust for a charitable organization for the purpose of creating
- 4 community housing, as defined in section 2 of chapter 44B, where the charitable organization purchased
- 5 said property from an entity that acquired the property pursuant to section 14 of chapter 244 of the general
- 6 laws, from the date of such real estate's acquisition by the charitable organization until such real estate is
- 7 leased, rented, or otherwise disposed of; provided said exemption for such real property shall not extend
- 8 beyond a total period of one year. This clause shall take effect upon its acceptance by any city or town.
- 9 SECTION 2. Section 13A of chapter 186 is hereby amended by inserting after the words "federal law"
- 10 the following:--

- and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy
- 12 administrator.
- 13 SECTION 3. The general laws are hereby amended by adding after chapter 186, the following new
- 14 chapter:-
- 15 Chapter 186A. Tenant protections in foreclosed properties
- 16 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
- 17 otherwise, have the following meanings:
- 18 'Entity', a business organization, or any other kind of organization, including without limitation, a
- corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture,
- 20 sole proprietorship, or any other category of organization, and any employee, agent, servant or other
- 21 representative of such entity.
- 22 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is
- intended to compel a tenant to vacate or to be constructively evicted from such housing accommodation.
- 24 "Foreclosing owner', an entity that holds title, in any capacity, directly or indirectly, without limitation,
- 25 whether in its own name, as trustee, or as beneficiary, to a housing accommodation that has been
- foreclosed upon, and either (1) held or owned a mortgage or other security interest in the housing
- accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary,
- 28 parent, trustee, or agent of, or otherwise is related to any entity which held or owned the mortgage or
- 29 other security interest in the housing accommodation at any time prior to the foreclosure of the housing
- 30 accommodation; or (2) is an institutional mortgagee that acquires or holds title to the housing
- accommodation within three years of the filing of a foreclosure deed on the housing accommodation.
- 32 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the
- mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property,

possession for three years, and by sale under the power of sale in a mortgage as described in chapter 244. 35 36 'Housing accommodation', any building or buildings, structure or structures, or part thereof or land 37 appurtenant thereto, or any other real or personal property used, rented or offered for rent for living or 38 dwelling purposes, together with all services connected with the use or occupancy of such property. 39 'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee, or agent of, or 40 otherwise related to any such entity, that holds or owns mortgages or other security interest in three or 41 more housing accommodations, or acts as a mortgage servicer of three or more mortgages of housing 42 accommodations. 43 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the 44 foreclosure or failed to pay the newly established rent pursuant to subsection (3) herein, but only if the 45 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom it 46 was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy other 47 than the obligation to surrender possession upon proper notice and has failed to cure such violation within 48 a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is 49 committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating 50 a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using 51 or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other 52 rental agreement which terminated on or after the effective date of this chapter, has refused, after written 53 request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a 54 further term of like duration and in such terms that are not inconsistent with the provisions of this chapter; 55 (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making 56 necessary repairs or improvement required by the laws of the United States, the Commonwealth or any

including, without limitation, foreclosure by auction, by bill in equity, by entry and continuation of

34

- 57 subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or
- for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee.
- 59 'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender, including, but not
- 60 limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant, or employee of
- the mortgagee, or any successor in interest or assignee of the mortagee's rights, interests or obligations
- 62 under the mortgage agreement.
- 'Mortgage Servicer', an entity which administers or at any point administered the mortgage, including, but
- not limited to, calculating principal and interest, collecting payments from the mortgagor, acting as an
- escrow agent, and foreclosing in the event of a default.
- 'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a housing
- 67 accommodation pursuant to a written lease or tenancy at will. Any person other than a legal dependent or
- spouse of the person or group of persons entitled to occupy the housing accommodation at the time of the
- 69 foreclosure that moves into the housing accommodation owned by the foreclosing owner following the
- 70 filing of the foreclosure deed without the express written permission of the owner shall not be considered
- a tenant under this statute.
- 72 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or
- intended for use as a residence by one household.
- 74 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not
- evict a tenant except for just cause, or in the event that there is a binding purchase and sale agreement for
- a bona fide third party to purchase said housing accommodation from a foreclosing owner, a foreclosing
- owner may provide the tenant with a notice to quit and serve the tenant with a summary process
- 78 summons and complaint to evict said tenant within 45 days of the closing date of said agreement.

- Section 3. In the event that a foreclosing owner disagrees with the amount of rent that the tenant-at-will
- or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or superior
- courts, or the housing court to claim that the rent is unreasonable and set a new rent. A lease between the
- 82 foreclosed upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall have
- a presumption of reasonableness.
- 84 Section 4. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act, or any
- ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less than ten thousand
- dollars. Each eviction done in violation of this Act constitutes a separate offense.
- 87 The district and superior courts, and the housing courts in the Commonwealth, shall have jurisdiction over
- an action arising from any violation of this Act, or any ordinance, or by-law adopted pursuant to this Act,
- and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to eviction that
- 90 the foreclosing owner attempted to evict a tenant in violation of any provision of this Act, or any
- ordinance or by-law adopted pursuant to this Act.
- 92 Section 5. This Act shall cease to have effect on December 31, 2013.
- 93 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word
- 94 "90" and inserting in its place the following:- "150".
- 95 SECTION 5. Section 33 of chapter 266 of the General Laws, as so appearing, is hereby amended by
- striking out, in lines 5 to 10, inclusive the words "(2) whoever, with intent to defraud, by a false
- 97 statement in writing respecting the financial condition, or means or ability to pay, of himself or of
- any other person, obtains credit from any bank or trust company or any banking institution or any
- 99 retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of
- larceny" and inserting in place thereof the following words:-- "(2) whoever, with intent to defraud,
- by a false statement in writing respecting the financial condition, or means or ability to pay, of

102 himself or of any other person, obtains for himself or for any other person credit from any bank or 103 trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 104 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall 105 be guilty of larceny. 106 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year or 107 by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause (1) or 108 if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be punished by 109 imprisonment in the state prison for not more than 5 years, or by a fine of not more than \$25,000 and 110 imprisonment in the house of correction for not more than 2 years. 111

- SECTION 6. Said chapter 266 is hereby further amended by striking out section 34, as so appearing,
- and inserting in place thereof the following section:--
- 113 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with
- property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.
- 115 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year
- or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause
- 117 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be
- punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more
- than \$25,000 and imprisonment in the house of correction for not more than 2 years.
- SECTION 7. Chapter 266 is amended by inserting after Section 35 the following new section:
- 121 Section 35A. Residential Mortgage Fraud
- Section 35A. (a) As used in this section, the following words shall have the following meanings,
- unless the context otherwise requires:--

- 124 "Funds", shall include, but not be limited to, a commission, fee, yield spread premium or
- compensation in any form.
- "Material omission", the omission or concealment of a material fact necessary in order to make the
- statement made, in the light of the circumstances under which it is made, not misleading.
- "Mortgage lending process", the process through which a person seeks or obtains a residential
- mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of
- terms, third-party provider services, underwriting, signing and closing, and funding of the loan.
- Documents involved in the mortgage lending process include, but shall not limited to: uniform
- residential loan applications or other loan applications; appraisal reports; HUD-1 settlement
- statements; supporting personal documentation for loan applications such as W-2 forms, verification
- of income and employment, bank statements, tax returns and payroll stubs; and any required
- disclosures.
- "Pattern of residential mortgage fraud", the violation of subsection (b) in connection with 3 or more
- residential properties.
- "Person", a natural person, corporation, company, limited liability company, partnership, real estate
- trust, association or any other entity.
- "Residential mortgage loan", a loan or agreement to extend credit made to a person, which loan is
- secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document
- representing a security interest or lien upon any interest in a 1- to-4 family residential property
- located in the commonwealth, including the renewal or refinancing of any such loan.
- (b) Whoever: (1) makes or causes to be made any material statement that is false or any statement
- that contains a material omission, knowing the same to be false or to contain a material omission,
- during or in connection with the mortgage lending process, with the intent that such statement be
- relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2)
- uses, or facilitates the use of, any material statement that is false or any statement that contains a

material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or (4) files, or causes to be filed, with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment. Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, or in the case of a natural person, not more than \$500,000 in the case of any other person, or by both such fine and imprisonment. (c) Any violation of this section may be prosecuted and punished in: the county in which the residential property for which a mortgage loan is being sought is located; any county in which any act was performed in furtherance of the violation; in any county in which any person alleged to have violated this section had control or possession of any proceeds of, or other funds received as a result of, the violation; any county in which a closing on the mortgage loan occurred; any county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar of deeds. (d) It shall be an affirmative defense if a defendant charged with a violation of this section as a result of conduct or an omission by an employee or agent of the defendant if the defendant demonstrates the following by a preponderance of the evidence:

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

- 174 (1) the defendant had in force, at the time of the violation and continues to have in force, a written
- policy that includes:
- 176 (i) A prohibition against conduct that violates this section by employees and agents of the defendant;
- 177 (ii) Penalties or discipline for violation of the policy;
- 178 (iii) A process for educating employees and agents concerning the policy and consequences of a
- 179 violation; and
- 180 (iv) A requirement for a criminal history check before employing an employee or engaging an agent
- and a requirement that the defendant will not employ or engage an individual whose criminal history
- check reveals a previous conviction of a crime involving fraud;
- 183 (2) the defendant demonstrates that it enforces the written policy described in clause (1); and
- 184 (3) Before the violation of this section the defendant communicated the written policy described in
- clause (1) and the consequences for violating the policy to the employee or agent who committed the
- 186 violation.
- 187 (e) It shall be a rebuttable presumption that a borrower in the residential mortgage lending
- process did not make a false material statement or a material omission. Two or more single
- incidents or occurrences of fraud in the mortgage lending process shall sufficient to overcome
- this rebuttable presumption.
- 191 SECTION 8. Chapter 255 of the General Laws is hereby amended by inserting after section 12 the
- 192 following section-
- 193 Section 13.
- 194 (a) For purposes of this section, the following terms shall have the following meanings unless the context
- 195 clearly requires otherwise:

"Abandoned", any structure or building that is not legally occupied for a period of 60 days or has visible 196 197 signs of physical distress, including boarded windows, fire damage, exposure to the elements, 198 susceptibility to unauthorized entry or where mortgage or property tax payments are delinquent for 60 199 days. 200 "Commissioner", the municipality's building inspector or commissioner or other administrative chief in a 201 town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state building code. 202 "Days", consecutive calendar days. 203 "Conclusion of the foreclosure process", means the date at which a mortgage foreclosure process is 204 finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds 205 "Owner", every person, entity, association, corporation, fiduciary, service company, property manager or 206 realtor who alone or severally has legal or equitable title or any interest in any real property or is a trustee 207 or agent appointed by the courts or is a mortgagee in possession. 208 "Residential Property", any property that contains one or more dwelling units used, intended, or designed 209 to be occupied for living purposes. 210 (b) Any city or town which accepts the provisions of this section may impose an abandoned property 211 registration program as provided in this chapter. All owners must register abandoned and/or foreclosed 212 residential properties with Commissioner on forms provided by the Commissioner. All registrations must 213 state the individual owner or agent's phone number and Mailing address. This registration must also 214 certify that the property was inspected and identify whether the property is abandoned. If the property is 215 abandoned, the registration must designate a local individual or local property management company 216 responsible for the security and maintenance of the property. This designation must state the individual

or company's name, phone number and local mailing address. This registration must be received within

sixty days of abandonment or within sixty days of the conclusion of the foreclosure process.

217

218

219 All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred dollars and no cents (\$100.00) must accompany the registration form. The fee and registration are valid 220 221 for the calendar year, or remaining portion of the calendar year in which the registration was initially 222 required. Subsequent registrations and fees are due January 1<sup>st</sup> of each year and must certify whether the 223 foreclosed property remains abandoned. 224 Once the property is sold or is no longer abandoned, the owner must provide proof of sale or written 225 notice of occupancy to the Commissioner. 226 (c) Properties subject to this section must be maintained in accordance with all applicable Sanitary, 227 Building Codes, and local regulations. The local owner or local property management company must 228 inspect and maintain the property on a monthly basis for the duration of the abandonment. 229 The property must contain a posting with the name and 24-hour contact phone number of the local 230 individual or property management company responsible for the maintenance. This sign must be clearly 231 visible from the street. 232 Compliance with this section shall not relieve the property owner of any other obligation set forth in 233 statute, regulation, covenant conditions and restrictions and/or homeowners' association rules and 234 regulations. 235 (d) The Commissioner shall have the authority and the duty to inspect properties subject to this section for 236 compliance and to issue citations for any violations. The Commissioner shall have the discretion to 237 determine when and how such inspections are to be made, provided that their policies are reasonably 238 calculated to ensure the enforcement of this section. 239 (e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of five 240 hundred dollars and no cents (\$500.00).

If applicable, failure to properly identify the name of the local individual or property management company is punishable by a fine, not to exceed five hundred dollars and no cents (\$500.00).

Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents (\$500.00) for each month the property remains out of compliance or is otherwise not maintained.

Violations of this chapter shall be treated as a strict liability offence regardless of intent.

This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month following days after such acceptance; provided further that if such day is at least 15 days after such acceptance; and provided further, that if such day is less that 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.